



United States
of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 116th CONGRESS, SECOND SESSION

Vol. 166

WASHINGTON, MONDAY, SEPTEMBER 21, 2020

No. 163

Senate

The Senate met at 3 p.m. and was called to order by the Honorable JOSH HAWLEY, a Senator from the State of Missouri.

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Eternal God, who has given us the gift of life, consecrate with Your presence the way our lawmakers work today. Since they don't know what a day will bring, help them to strive to serve You in faithfulness each moment. In all things, draw their minds to the goal of seeking to please You. As they draw near to You, illuminate their paths with Your wisdom and grace. Lord, show them how to unselfishly serve Your great purposes for humanity, proving themselves worthy of Your manifold blessings.

And, Lord, as millions mourn Supreme Court Justice Ruth Bader Ginsburg's death, send the solace of Your comfort.

We pray in Your unifying Name. Amen.

PLEDGE OF ALLEGIANCE

The Presiding Officer led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. GRASSLEY).

The bill clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, September 21, 2020.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable JOSH HAWLEY, a Senator from the State of Missouri, to perform the duties of the Chair.

CHUCK GRASSLEY,
President pro tempore.

Mr. HAWLEY thereupon assumed the Chair as Acting President pro tempore.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

REMEMBERING JUSTICE RUTH BADER GINSBURG

Mr. McCONNELL. Mr. President, our Nation is mourning the end of an exceptional American life. Justice Ruth Bader Ginsburg meant so much to our country.

First and foremost, she was a brilliant, generational legal mind who climbed past one obstacle after another to summit the very pinnacle of her profession.

Justice Ginsburg was a fixture on our Nation's highest Court for more than a quarter of a century. She was not just a lawyer—no, not just a lawyer—but a leader. From majority opinions to impassioned dissents, her life's work will not only continue to shape jurisprudence but also enlighten scholars and students for generations.

By all accounts, Justice Ginsburg loved her work because she loved the law. In a more ordinary life story, her courage and continued excellence in

the face of multiple serious illnesses would itself be the heroic climax rather than just one more remarkable chapter among so many.

On the Court, Justice Ginsburg was a universally admired colleague. It is no wonder that many Americans have taken particular comfort these past days in remembering her famous friendship with her ideological opposite, the late Justice Scalia.

Together, they made sure the halls of justice also rang with laughter and comedy. They rarely sat on the same side of a high-profile decision, but they still sat together at the opera and most any other time they could manage to be together.

The legal world is mourning a giant, but Justice Ginsburg's fellow Justices, a legion of loyal law clerks, and countless many others are mourning a close friend or a mentor. The Senate sends condolences to them all.

Yet Justice Ginsburg's impact on American life went deeper still. Friday's loss feels personal to millions of Americans who may never have made her acquaintance.

Justice Ginsburg was a spirited, powerful, and historic champion for American women to a degree that transcends any legal or philosophical disagreement. As she climbed from the middle-class, Brooklyn, Jewish roots, of which she was so proud, into the most rarefied air of law and government, the future Justice had to surmount one sexist obstacle after another.

Justice Ginsburg did not only climb the mountain; she blazed the trail. Through deeds, through words, and simply through her example, she helped clear away the cobwebs of prejudice. She opened one professional door after another and made certain they stayed open behind her.

Directly or indirectly, she helped entire generations of talented women build their lives as they saw fit and enrich our society through professional

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



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work. Law and politics aside, no friend of equality could fail to appreciate Justice Ginsburg's determination.

Finally, while Justice Ginsburg relished forceful writing and detailed argument, she was also, in important ways, a uniter. In recent years, many who consider themselves her admirers and might wish to claim the Justice for their political "side" have come to embrace reckless proposals to politicize the very structure of the Court itself. But Justice Ginsburg remained unswerving in her public commitment to preserving the neutral foundation of the institution she loved.

The entire Senate is united in thinking of and praying for Justice Ginsburg's family—most especially her daughter Jane, her son James, her grandchildren, step-grandchildren, great-granddaughter, and everyone who called her their own.

SUPREME COURT NOMINATIONS

Mr. MCCONNELL. Mr. President, President Trump's nominee for this vacancy will receive a vote on the floor of the Senate. Now, already, some of the same individuals who tried every conceivable dirty trick to obstruct Justice Gorsuch and Justice Kavanaugh are lining up—lining up—to proclaim that the third time will be the charm.

The American people are about to witness an astonishing parade of misrepresentations about the past, misstatements about the present, and more threats against our institutions from the same people who have already been saying for months—well before this—that they want to pack the Court.

Two years ago, a radical movement tried to use unproven accusations to ruin a man's life because they could not win a vote fair and square. Now they appear to be readying an even more appalling sequel. This time the target will not just be the presumption of innocence for one American but our very governing institutions themselves.

There will be times in the days ahead to discuss the naked threats that leading Democrats have long been directing at the U.S. Senate and the Supreme Court itself. These threats have grown louder, but they predate this vacancy by many months. There will be time to discuss why Senators who appear on the steps of the Supreme Court and personally threaten Associate Justices if they do not rule a certain way are ill-equipped to give lectures on civics, but today let's dispense with a few of the factual misrepresentations right at the outset.

We are already hearing incorrect claims that there is not sufficient time to examine and confirm a nominee. We can debunk this myth in about 30 seconds. As of today, there are 43 days until November 3 and 104 days until the end of this Congress.

The late, iconic Justice John Paul Stevens was confirmed by the Senate

19 days after this body formally received his nomination—19 days from start to finish. Justice Sandra Day O'Connor, another iconic jurist, was confirmed 33 days after her nomination. For the late Justice Ginsburg herself, it was just 42 days.

Justice Stevens' entire confirmation process could have been played out twice between now and November 3, with time to spare, and Justice Ginsburg herself could have been confirmed twice between now and the end of the year, with time to spare.

The Senate has more than sufficient time to process a nomination. History and precedent make that perfectly clear.

Others want to claim that this situation is exactly analogous to Justice Scalia's passing in 2016 and so we should not proceed until January. This is also completely false.

Here is what I said on the Senate floor the very first session day after Justice Scalia passed: "The Senate has not filled a vacancy arising in an election year when there was divided government since 1888, almost 130 years ago."

Here is what I said the next day, when I spoke to the press for the first time on the subject: "[You] have to go back to 1888, when Grover Cleveland was President, to find the last time a vacancy created in a Presidential election year was approved by a Senate of a different party."

As of then, only six prior times in American history had a Supreme Court vacancy arisen in a Presidential election year and the President sent a nomination that year to a Senate of the opposite party. The majority of those times, the outcome was exactly what happened in 2016—no confirmation—the historically normal outcome when you have divided government.

President Obama was asking Senate Republicans for an unusual favor that had last been granted nearly 130 years before then, but voters had explicitly elected our majority to check and balance the end of his Presidency. So we stuck with the basic norm.

And, by the way, in so doing, our majority did precisely what Democrats have indicated they would do themselves. In 1992, Democrats controlled the Senate opposite President Bush 41. Then-Senator Joe Biden chaired the Judiciary Committee. Unprompted—unprompted—he publicly declared that his committee might refuse to cooperate if a vacancy arose and the Republican President tried to fill it.

In 2007, Democrats controlled the Senate opposite President Bush 43, and with more than a year and a half left in President Bush 43's term, the current Democratic leader declared that "except in extraordinary circumstances," the opposite-party Senate should boycott any further confirmations to the Supreme Court. That is the current Democratic leader a year and a half before the end of the Bush administration. So in 2016 Senate Republicans did

not only maintain the historical norm. We also ran the Biden-Schumer playbook.

When voters have not chosen divided government, when the American people have elected a Senate majority to work closely with the sitting President, the historical record is even more overwhelming in favor of confirmation. Eight such times in our Nation's history, new vacancies have arisen and Presidents have made nominations, all during the election year. Seven of the eight were confirmed, and the sole exception, Justice Abe Fortas, was a bizarre situation including obvious personal corruption that extended into financial dealings.

Apart from that one strange exception, no Senate has failed to confirm a nominee in the circumstances that face us right now. Aside from that one strange exception, no Senate has failed to confirm a nominee in the circumstances that face us right now. The historical precedent is overwhelming, and it runs in one direction. If our Democratic colleagues want to claim they are outraged, they can only be outraged at the plain facts of American history. There was clear precedent behind the predictable outcome that came out of 2016, and there is even more overwhelming precedent behind the fact that this Senate will vote on this nomination this year.

The American people reelected our majority in 2016. They strengthened it further in 2018 because we pledged to work with President Trump on the most critical issues facing our country. The Federal judiciary was right at the top of the list.

Ironically, it was the Democratic leader who went out of his way to declare the midterm 2018 elections a referendum on the Senate's handling of the Supreme Court. My friend, the occupant of the Chair, was running that year. The Democratic leader went out of his way to declare the 2018 midterms a referendum on the Senate's handling of the Supreme Court.

In his final speech before Justice Kavanaugh was confirmed, he yelled—literally, yelled—over and over at the American people to go vote. He told Americans to go elect Senators based on how they had approached their advice-and-consent duties over these weeks. Unfortunately for him, many Americans did just that. After watching the Democrats' tactics, voters grew our majority and retired four—four—of our former colleagues who had gone along with their party's behavior.

We gained two seats. They lost four. That was the issue. Perhaps more than any other single issue, the American people strengthened this Senate majority to keep confirming this President's presumptive judicial nominees who respect our Constitution and understand the proper role of a judge.

In 2014, the voters elected our majority because we pledged to check and balance a second-term, lame-duck President. Two years later, we kept our word.